
(2014) 05 CAL CK 0044
In the Calcutta High Court
Case No : CPAN 35 of 2014

Sajal Kumar Mitra

APPELLANT

Vs

Smt. Chandralekha Mitra and Another

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 10, 2(b), 22
Penal Code, 1860 (IPC) — Section 41

Citation : (2014) 3 CALLT 282

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Ratnanka Banerjee, Mr. Aniruddha Roy, Mr. Ratnesh Kumar Rai and Mr. Anunoy Basu, Advocate for the Appellant

Judgement

Ranjit Kumar Bag, J.—This is an application u/s 10 of the Contempt of Courts Act, 1971 for drawing up proceeding for contempt against the respondents/contemnors for wilful and deliberate violation of the order dated November 17, 2011 passed by Learned Civil Judge (Senior Division), Sealdah, South 24-Parganas in Title Suit No. 168 of 2011, which was extended from time to time and was in force till the time of filing of the application before this Court.

2. The petitioner as plaintiff filed Title Suit No. 168 of 2011 against the respondent nos. 1 and 2 being the defendants of the said suit for declaration that the plaintiff is the beneficial owner of and absolutely entitled to 8943 shares in Mitra S.K. Pvt. Ltd., an existing company within the meaning of the Companies Act, 1956 (hereinafter referred to as the said company) and that the plaintiff is the beneficial owner of half of the estate of Late Tapan Kumar Mitra including 8943 shares in the said company and for perpetual injunction restraining the defendant nos. 1 and 2 from transferring any portion of 17886 shares of the said company, and also for perpetual injunction restraining the defendant no. 2 from exercising any power as Director of the said company and from exercising any

voting right in respect of any part of the said 17886 shares of the said company without consent of the plaintiff in writing. The petitioner being the plaintiff also filed an application in the said suit under Order 39 Rules 1 and 2 of the CPC praying for an order of temporary injunction restraining the respondent no. 2 from exercising any voting right in respect of any portion of the said 17886 equity shares of the said company in any general meeting of the said company and/or from transferring any portion of the said shares in any manner whatsoever without the consent of the petitioner. On November 17, 2011, Learned Civil Judge (Senior Division), heard both sides and was pleased to pass an order of injunction restraining the respondent no. 2 being the contemnor no. 1 from using her voting right and transferring the shares in question in favour of the contemnor no. 2 being the defendant No. 1 of the said Title Suit till December 16, 2011. It is contended on behalf of the petitioner that the said order of injunction was extended from time to time in presence of learned advocates of both sides and is in existence till the time of filing the application for contempt of court before this court

3. The annual general meeting of the said company for the year 2012-2013 was held on September 30, 2013 at the Board Room of Hotel Senator at 15, Camac Street, Kolkata-700017 and the contemnor nos. 1 and 2 joined the meeting and introduced contemnor no. 3 as their alleged proxy holder and the contemnor nos. 1 and 2 demanded for exercise of the voting right of the contemnor no. 1 in respect of her shareholding which is the subject matter of the said Title Suit and in respect of which the order of injunction was passed on November 17, 2011 and extended from time to time and is still subsisting. The contemnors were informed by the Chairman of the said meeting that the said voting right of the contemnor no. 1 cannot be exercised, but the contemnor nos. 2 and 3 forcefully attended the meeting and ultimately the contemnor no. 1 along with contemnor no. 2 had cast her vote on the ballot paper in violation of the order of injunction granted on November 17, 2011 by Learned Civil Judge (Senior Division). However, the Chairman of the meeting rejected those ballot papers on the ground that the shares were enjoined by the order of the court. The contemnor nos. 1 and 2 served one letter on the petitioner through their advocates contending, inter alia, that the interim order of injunction was not extended after June 29, 2013. It is alleged that it is incorrect to state that the interim order of injunction was not extended after June 29, 2013, though by an administrative order Title Suit was transferred from the Court of Learned Civil Judge (Senior Division) to the Court of Learned Judge, Small Causes Court at Sealdah. The petitioner has alleged that the contemnor no. 1 being the defendant no. 2 of the Title Suit wilfully violated the order of injunction granted by Learned Civil Judge (Senior Division) by exercising her voting right in respect of the alleged shares in the annual general meeting of the company held on September 30, 2013. The petitioner has also alleged that the contemnor no. 2 being the defendant no. 1 of the Title Suit has aided and abated the contemnor no. 1 in exercising her voting right in respect of the alleged shares in the annual general meeting of the

company held on September 30, 2013 by deliberately and wilfully violating the order of injunction granted by Learned Civil Judge (Senior Division). The petitioner has also alleged that the contemnor no. 3 has aided and abated the contemnor no. 1 in participating in the annual general meeting of the company held on September 30, 2013 and in exercising her voting right in respect of the shares of the company as the alleged proxy of the contemnor nos. 1 and 2 in violation of the order of injunction granted by Learned Civil Judge (Senior Division). The petitioner has also alleged that the contemnors have wilfully and deliberately violated the order of injunction granted by Learned Civil Judge (Senior Division) on November 17, 2011 in Title Suit No. 168 of 2011 in attending the annual general meeting of the company held on September 30, 2013 and in exercising the alleged voting right of the contemnor no. 1 along with contemnor no. 2 in respect of the alleged shares of the company and by aiding and abating the contemnor no. 1 in violating the order of injunction. The petitioner has prayed for invoking the power u/s 10 of the Contempt of Courts Act, 1971 for imposition of punishment on the contemnors for wilful and deliberate violation of the order of injunction granted by Learned Civil Judge (Senior Division) in Title Suit No. 168 of 2011.

4. This Court can issue notice to the contemnors/respondents only if this court is satisfied that this court should invoke the discretionary power u/s 10 of the Contempt of Courts Act, 1971 for contempt of subordinate court, which granted the order of ad interim injunction against the respondent nos. 1 and 2 under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

5. Mr. Ratnanka Banerjee, Learned Counsel appearing for the petitioner has drawn my attention to the decisions reported in Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra, , Rudraiah Vs. State of Karnataka and Others, , Bimal Chandra Sen Vs. Kamla Mathur and Another, , Haridas Das and Another Vs. State of West Bengal and Others, , J.D. Muthukrishnan Vs. Superintendent of Police and Others, , State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, and Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, to put forward the argument that the High Court can invoke its discretionary power u/s 10 of the Contempt of Courts Act, 1971 for imposition of punishment on the contemnors for wilful and deliberate violation of the order of temporary injunction granted by Learned Civil Judge (Senior Division) in Title Suit No. 168 of 2011, in spite of alternative remedy available to the petitioner under Order 39 Rule 2A of the Code of Civil Procedure. Admittedly, the order of injunction was granted by Learned Civil Judge (Senior Division), Sealdah on November 17, 2011 in Title Suit No. 168 of 2011 restraining the defendant no. 2 i.e. contemnor no. 1 from using her voting right and transferring the shares of the said company in favour of the respondent no. 2 i.e. contemnor no. 2 till 16.12.2011. It appears from the record that the said order of temporary injunction was extended from time to time till 16.12.2013. It is alleged by the petitioner that the respondent nos. 1, 2 and 3 have violated the said order of temporary injunction wilfully and deliberately on September 30, 2013 when the

annual general meeting of the company was held. The important question to be decided by this court is whether this court should invoke discretionary power u/s 10 of the Contempt of Courts Act, 1971 for punishment of the respondent nos. 1, 2 and 3 for their alleged wilful and deliberate violation of the order of temporary injunction granted by Learned Civil Judge (Senior Division), in spite of having adequate remedy for imposition of punishment under Order 39 Rule 2A of the Code of Civil Procedure. I would like to deal with the decisions cited by Mr. Banerjee for the purpose of coming to the conclusion whether this court should invoke the power u/s 10 of the Contempt of Courts Act, 1971 in the instant case.

6. In the case of Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra, the Hon'ble Supreme Court dealt with an appeal against the order of imposition of punishment by the Bombay High Court by invoking contempt jurisdiction of the High Court. In this case one defamatory article was published in the journal which amounted to contempt of court. The facts of this reported case are clearly distinguishable from the facts of the present case and as such the ratio of the said decision will not be applicable in the present case. However, in this case the Hon'ble Supreme Court of India has held that the summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice. In the case of Rudraiah Vs. State of Karnataka and Others, , the Division Bench of the Karnataka High Court has held in paragraph 5 as follows: "In cases of disobedience or breach of injunction order issued temporarily during the pendency of a suit, either under Rule 1 or 2 of Order 39, Civil procedure code, the action is contemplated by the very court which issues the injunction order under Rule 2A of Order 39 of the Code of Civil Procedure. It contemplates the forfeiture of property as also putting of the person who commits breach into civil prison for a period not exceeding three months. The provision thereunder is obviously based on the principle of contempt of court. That being so, the general provisions made under the Contempt of Courts Act cannot be invoked by the decree holder for forcing the party to obey the injunction order." Thus, the Division Bench of the Karnataka High Court has laid down that in case of disobedience or breach of order of temporary injunction during the pendency of a suit, it is inexpedient to invoke and exercise the contempt jurisdiction of the High Court, because in such cases action is contemplated by the very Court which issues the order of injunction under Order 39 Rule 2A of the Code of Civil Procedure.

7. In the case of "Samir Kumar Sarkar V. Maharaj Singh" reported in 1982(II) CHN 213, the Division Bench of our High Court has held in paragraph 11 as follows: "When the matter relates to mere infringement of an order, as between the rival parties, it is clearly inexpedient to invoke and exercise contempt jurisdiction as a mode of executing the order. The proper and correct mode is to take recourse to Order 39 Rule 2A of the Code of Civil Procedure. Contempt jurisdiction should not be invoked in such cases which are primarily reserved for what essentially brings the administration of justice into contempt or unduly

weakens it." In this case the Division Bench of our High Court refused to invoke contempt jurisdiction u/s 10 of the Contempt of Courts Act, 1971 for deliberate and wilful violation of the order of injunction granted by the subordinate court. Similarly, in the case of "Harsh Kumar V. Soma Dey" reported in 1997 Cri. L.J. 4615, the Division Bench of our High Court refused to invoke the power u/s 10 of the Contempt of Courts Act, 1971 for wilful and deliberate violation of the order of temporary injunction granted by the subordinate court on the ground that a specific remedy for such breach is available in the CPC and that no reason was advanced in the said case as to why the subordinate court would fail to provide an efficacious and effective relief under the Code of Civil Procedure. In the case of Bimal Chandra Sen Vs. Kamla Mathur and Another, the Division Bench of Delhi High Court categorically held that the jurisdiction to punish for disobedience of the order of injunction vests in the court which granted the injunction. The High Court has power to punish for contempt of subordinate courts u/s 10 of the Contempt of Courts Act, 1971, but the said power cannot be invoked for enforcement of an order of injunction granted by the subordinate court, as the same does not fall within the ambit of Section 2(b) of the Contempt of Courts Act, 1971. The subordinate court can punish the defendant for disobedience of the order of temporary injunction under Order 39 Rule 2A of the Code of Civil Procedure. Thus, the Division Bench of Delhi High Court also refused to invoke the power u/s 10 of the Contempt of Courts Act, 1971 for wilful violation of the order of temporary injunction granted by the subordinate court under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

8. Mr. Banerjee has assailed the reasons given by our High Court and the Karnataka High Court in the decisions reported in 1982(II) CHN 213 and Rudraiah Vs. State of Karnataka and Others, . In both the above decisions, it is observed that the special provisions contained in Order 39 Rule 2A of the CPC will prevail over the general provisions of law of contempt. In other words, the provisions of the Contempt of Courts Act, 1971 have been construed as general law and the provisions of the CPC have been construed as special law. Relying on the decision of Haridas Das and Another Vs. State of West Bengal and Others, , Mr. Banerjee has urged this court to consider paragraph 8 which lays down as follows: "Section 41 of the Indian Penal Code defines a special law as a law applicable to a particular subject. The Contempt of Courts Act is an Act dealing with the subject of contempt of courts and is, therefore, a special law." According to Mr. Banerjee, the Contempt of Courts Act, 1971 being special law as laid down by the Hon"ble Supreme Court of India, will prevail over the provisions of the Code of Civil Procedure, and as such the High Court can always invoke the power u/s 10 of the Contempt of Courts Act, 1971 for contempt of the subordinate court, in spite of remedy available under the provisions of the Code of Civil Procedure. In this connection, Mr. Banerjee has also relied on the Single Bench decision of the Bombay High Court and the Single Bench decision of the Madras High Court. In the case of "Ram Gopal Waghdhare V. Sudhir Ram Waghdhare" reported in (1999) (1) Bom. L.R. 15, the Hon"ble Justice Smt. R.P. Desai invoked

the power u/s 10 of the Contempt of Courts Act, 1971 for wilful violation of the order of injunction granted by the City Civil Court and affirmed on appeal by the High Court of Bombay on the ground that Section 22 of the Contempt of Courts Act, 1971 clearly lays down that the Contempt of Courts Act, 1971 is applicable in addition to and not in derogation of other laws relating to contempt. However, in this case the order of injunction granted by the City Civil Court was affirmed on appeal by the High Court of Bombay and the contemnor wilfully violated not only the order passed by the City Civil Court, but also the order passed by the High Court of Bombay on appeal. Accordingly, the ratio of the decision reported in (1999) (1) Bom. L.R. 15 will not be applicable in the facts of the present case where the order of temporary injunction granted by the subordinate court has not been challenged before any higher forum including High Court.

9. It is true that the Single Bench of the Madras High Court in the case of J.D. Muthukrishnan Vs. Superintendent of Police and Others, and the Single Bench of Gauhati High Court in the case of Deepanjan Guha Vs. Rajesh Gupta and Others, held that the High Court can exercise power u/s 10 of the Contempt of Courts Act, 1971 for wilful violation of the order of injunction granted by the subordinate courts, in spite of remedy available under Order 39 Rule 2A of the Code of Civil Procedure.

10. On consideration of all the decisions cited at the Bar, I find that there is cleavage of opinion with regard to invoking of power u/s 10 of the Contempt of Courts Act, 1971 when alternative remedy is available under order 39, Rule 2A of the Code of Civil Procedure. The consistent view of the Division Bench of the Karnataka High Court, Delhi High Court and our own High Court is that the High Court should refuse to invoke the power u/s 10 of the Contempt of Courts Act, 1971 for wilful violation of the order of injunction granted by the subordinate courts, because the aggrieved party has the remedy under Order 39 Rule 2A of the Code of Civil Procedure. The contrary view expressed by the Single Bench of the Madras High Court, Bombay High Court and the Gauhati High Court cannot be taken into consideration by me sitting in a Single Bench, when the Division Bench of our High Court has clearly given the dictum that the High Court cannot invoke the power u/s 10 of the Contempt of Courts Act, 1971 for wilful and deliberate violation of the order of injunction granted by the subordinate courts, because the aggrieved party has remedy under Order 39 Rule 2A of the Code of Civil Procedure. I am bound to follow the decision of the Division Bench of our High Court reported in 1997 Cri. L.J. 4615 and the decision reported in 1982(II) CHN 213.

11. The last submission of Mr. Banerjee is that the Single Judge can refer any matter to the Hon'ble Chief Justice requesting His Lordship to constitute a special Bench for determination whether the High Court should invoke the power u/s 10 of the Contempt of Courts Act for wilful and deliberate violation of the order of injunction granted by the subordinate courts. According to Mr. Banerjee, the Division Bench of our High Court and the Division Bench of the Karnataka

High Court were not correct in holding that the Contempt of Courts Act is general law, which by all means is a special law. Mr. Banerjee also contends that the Division Bench of our High Court, the Division Bench of Delhi High Court and the Division Bench of Karnataka High Court have failed to take into consideration that the Contempt of Courts Act is applicable in addition to and not in derogation of other laws relating to contempt as laid down in Section 22 of the Contempt of Courts Act, 1971. Mr. Banerjee has relied on the decision of Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, in support of his contention that the matter should be referred to the Hon''ble Chief Justice for constitution of a Special Bench. It is relevant to point out some portion of paragraph 10 of the said decision reported in Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel, , which is as follows: "When it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same court, or there are decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the Judge or the Bench may pass an order that the papers be placed before the Chief Justice of the High Court with a request to form a Special or Full Bench to hear and dispose of the case or the questions raised in the case." In the instant case, I do not find any conflict of decisions of our High Court. Nor can I persuade myself to hold that the Single Bench decision of other High Courts, which are contrary to the decisions of our High Court, are strongly persuasive for a reference to the Hon''ble Chief Justice for constitution of a Special Bench. I also do not find that any important question of law arises in this case for reference to the Hon''ble Chief Justice for constitution of a Special Bench. I fully agree with the two decisions of the Division Bench of our High Court and hold that if the High Court starts invoking power u/s 10 of the Contempt of Courts Act, 1971 for wilful violation of the order of injunction granted by the subordinate courts, in spite of efficacious remedy available under Order 39 Rule 2A of the Code of Civil Procedure, the floodgate of such contempt applications will be opened up before this court, which is already overloaded with litigations.

12. In view of my above findings, I cannot persuade myself to invoke the power u/s 10 of the Contempt of Courts Act, 1971 as contended on behalf of the petitioner. This application is, thus, dismissed.

Urgent Xerox certified copy of this judgment, if applied for, be given to the parties expeditiously after compliance with all necessary formalities.